IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 11304 of 2007(U)

PETITIONER:

VARGHESE, S/O.KURIAN,
MADAPARAMBIL HOUSE, KADAVOOR P.O.,
NJARAKKAD.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:
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1. OMBUDUSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

2. SECRETARY, MUVATTUPUZHA MUNICIPALITY, MUVATTUPUZHA.

3. BINU, S/O.SREEDHARAN, OZHAKKANATT HOUSE, RAMAMANGALAM, MANADI VILLAGE.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.
ADV.SRI.V.M.KURIAN, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 11304 OF 2007

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Dated this the 14th day of June, 2007

JUDGMENT

Petitioner has approached this court on the following brief allegations:

Petitioner is the absolute owner of the property having an extent of 19.530 cents in Marady village. He demolished the old building in the property and obtained building permit from the second respondent for construction of a multi storied building in the property and started levelling of the property. The third respondent and his brother filed W.P.(C)No.535 of 2007 praying to quash the building permit on the ground that the building permit was obtained by fraud by encroaching into their property. By Ext.P3 interim order this court directed the Taluk Surveyor to conduct the measurement of the property belonging to the third respondent as well as the property belong to the petitioner

by virtue of title and identify the properties. Thereafter vide Ext.P4 judgment this court took the following view:

> " *The grievance which has been raised more prominently in this case by the petitioners is that B.schedule property in Ext.P5 over which they claim title and possession and is subject matter of O.S.No.423/06 on the files of the Munsiff's Court, Muvattupuzha has been shown by the third respondent in the plan submitted by him before the 1st respondent-Municipality and that the Municipality has treated that property (hereinafter referred to as the disputed property) as property belonging to the third respondent for the purpose of statutory set backs. In the plan submitted by the Taluk Surveyor the disputed property is shown as B-schedule property shaded green having an area of 15Sq.M. It has been clearly stated in the report that on cross-checking with the building plan submitted by the third respondent which was approved by the Municipality (Ext.P7) no portion of the*

construction to be made by the 3rd respondent or for that matter any portion shown as set back will come within the disputed property or within the property covered by the title documents standing in the name of the petitioners."

Thereafter this court expressed the view that it is not expressing any view on the merits of the claims and contentions of the parties regarding title/possession over the disputed property and all those issues are to be adjudicated by the Civil Court.

2. The third respondent approached the Sub Divisional Magistrate and obtained Ext.P5 order dated 26-03-2007 directing the petitioner to stop all the piling works. Ext.P5 would show the case of the third respondent that the piling works is going on using heavy machineries and there is every possibility of damages to the third respondent's building and danger to the life and property of the third respondent, employees working in her institution

and the general public.

3. The further case of the petitioner is that the Magistrate subsequently vacated the stay order also. It is thereafter that the third respondent proceeded to file Ext.P6 before the Ombudsman for the Local Self Government Institutions. By Ext.P7 the Ombudsman issued notice before admission and there was a direction to the respondent not to proceed with the construction in question until further orders. Petitioner challenges Ext.P6 and P7. According to the petitioner, the matter stands concluded by Ext.P3 and P4. He would further contend that, raising similar allegation regarding the piling, petitioner had approached the Sub Divisional Magistrate who originally passed Ext.P5 order and when being apprised of the real situation, Ext.P5 was vacated. He would submit that the matter being concluded as such, there is no basis in the proceedings instituted as Ext.P6 before the Ombudsman and the interim order passed as Ext.P7. It is specifically pointed

out by the learned counsel for the petitioner that petitioner was not even made a party in the proceedings.

4. Ext.P6 proceeds on two basic allegations. One is that permission granted by the Municipality in favour of the petitioner for construction is on the Puramboke land. Second allegation is that piling work is dangerous to the human life also. As far as the question of piling being dangerous is concerned, I think that for two reasons that the matter cannot be enquired into by the Ombudsman. The third respondent has already approached the Sub Divisional Magistrate regarding piling work. There is no dispute that the piling work is over. Third respondent has already approached the Magistrate who had passed Ext.P5 order on the very same allegation and it was later vacated. I note that this court has already directed Ext.P7 to be kept in abeyance. The only question is whether Ext.P6 can be proceeded against the allegation of permission being granted and construction on the land which is puramboke.

I feel that this is a matter which can be left to be considered by the Ombudsman. The third respondent will take steps to implead the petitioner within two weeks from today. If the third respondent files an application for impleading within two weeks from today, the Ombudsman will take up the matter (Ext.P6) and afford sufficient opportunity to the parties to establish their contentions. In particular, it will be open to the petitioner to contend that the matter stands concluded by Exts. P3 and P4. It is also open to the parties to raise all contentions available to them. It is certainly open to the petitioner to produce the survey sketch prepared by the revenue authorities. I note the case of the petitioner that the petitioner is carrying on construction on 19.530 cents of land in Sy.No.369/7-3 of which he is the absolute owner and he acquired the property under will. If the third respondent does not take steps to implead the petitioner within two weeks from today, I order that Ext.P6 will stand dismissed. As far as Ext.P7 is concerned, in the

totality of the facts and circumstances and in the light of the submission made by the learned counsel for the petitioner that if the construction made by the petitioner is found to be on Puramboke land, it is liable to be ordered to be demolished, there is no need to interdict the construction as done in Ext.P7. Therefore Ext.P7 shall not be implemented. The Ombudsman will decide the matter as expeditiously as possible.

(K.M.JOSEPH, JUDGE)

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